

**REPORT OF THE JUDICIAL COUNCIL JUVENILE OFFENDER / CHILD IN NEED OF CARE
ADVISORY COMMITTEE ON JUVENILE ADJUDICATION EXPUNGEMENT**

December 10, 2021

In November 2019, Christine Campbell, Kansas Legal Services' Statewide Pro Bono Director, asked the Judicial Council to evaluate the impact unpaid fines and fees have on expungement and consider whether unpaid costs, fees, fines, or restitution should be a reason to deny expungement. The Judicial Council referred the study to its Criminal Law Advisory Committee. The Criminal Law Advisory Committee made recommendations regarding the expungement of adult criminal convictions. The Criminal Law Advisory Committee did not have the necessary expertise to make recommendations regarding juvenile adjudication expungements; therefore, the Criminal Law Advisory Committee recommended the Judicial Council refer the study to the JO/CINC Advisory Committee. In December 2020, the Judicial Council accepted the Criminal Law Advisory Committee's recommendation and referred the study to the JO/CINC Advisory Committee to consider the impact of unpaid costs, fines, fees, and restitution on the expungement of juvenile adjudications.

COMMITTEE MEMBERSHIP

The members of the Judicial Council JO/CINC Advisory Committee are:

Hon. Patricia Macke Dick, Chair, Hutchinson; Chief District Court Judge in the 27th Judicial District and member of the Judicial Council.

Kristi Allen, Wichita; Assistant Sedgwick County District Attorney.

Kathy L. Armstrong, Shawnee Mission; Assistant General Counsel for Preventive and Protection Services, Kansas Department for Children and Families.

Charlene Brubaker, Hays; Assistant Ellis County Attorney.

Caitlyn Eakin, Topeka; State Director of Kansas CASA Association.

Donald W. Hymer, Olathe; Assistant District Attorney in Johnson County.

Hon. Greg Keith, Wichita; District Court Judge in the 18th Judicial District.

Rep. Annie Kuether, Topeka; State Representative from the 55th District.

Rep. Brenda Landwehr, Wichita; State Representative from the 105th District.

Prof. Richard E. Levy, Lawrence; J.B. Smith Distinguished Professor of Constitutional Law at the University of Kansas School of Law.

Rachel Y. Marsh, Lawrence; CEO, Children’s Alliance of Kansas.

Libby Snider, Topeka; Attorney, Kansas Department of Corrections.

Amy Raymond, Topeka; Chief of Trial Court Services, Office of Judicial Administration, non-voting member.

BACKGROUND

In 2020, the Judicial Council’s Criminal Law Advisory Committee considered the impact of unpaid costs, fees, fines, and restitution on the expungement of adult criminal convictions. The Criminal Law Advisory Committee recommended the adult expungement statutes, K.S.A. 2019 Supp. 12-4516 and 21-6614, be amended in the following ways:

(1) to allow the expungement waiting period to begin before the person has completed payment of costs, fees, fines, or restitution;

(2) to prohibit courts from denying an expungement due to the petitioner’s inability to pay costs, fees, fines, or restitution;

(3) to require payment of costs, fines, fees, and restitution after expungement; and

(4) to allow certain people to access documents and information regarding the costs, fines, fees, and restitution after the expungement for the purpose of collecting the debt.

These recommendations were accepted by the Judicial Council¹ and submitted to the Kansas legislature for consideration in 2021 S.B. 105.²

A juvenile offender case is a civil, not criminal, case. The term “juvenile adjudication” is used to describe the *civil* finding by the court in a *juvenile offender case*. The term “conviction” is used to describe a *criminal* finding by the court in an *adult criminal case*. The expungement of a juvenile adjudication is governed by different statutes than expungement of adult criminal convictions. The procedure for an expungement of a juvenile adjudication is set out in K.S.A. 2020 Supp. 38-2312. Not all juvenile adjudications are expungable; however, in general, if an

¹ The Final Report of the Criminal Law Advisory Committee on Expungement and Unpaid Costs, Fees, Fines, and Restitution (December 2020) can be found on the Judicial Council website, <http://www.kansasjudicialcouncil.org/Documents/Studies%20and%20Reports/2020%20Reports/Expungement%20Fines%20and%20Fees%20Report.pdf>.

² At the time of this report, 2021 S.B. 105 had not been passed by the Kansas legislature.

adjudication is expungable, the court shall order the expungement of the record and files if the court finds:

- (1) the juvenile has reached 23 years of age or the statutorily prescribed waiting period has elapsed (0, 1, or 2 years);
- (2) the juvenile has not had another juvenile adjudication, been convicted in the adult criminal system of a felony or misdemeanor, excluding traffic offenses, and no such proceedings are pending seeking such a conviction or adjudication; and
- (3) the circumstances and behavior of the petitioner warrant expungement.

See K.S.A. 2020 Supp. 38-2312(e).

DISCUSSION

Waiting Period

In adult criminal expungement, depending on the type of conviction, a person may not file a petition for expungement until a certain number of years (1, 3, 5 or 10 years) have passed.³ The Criminal Law Advisory Committee agreed that requiring the payment of all fines, fees, court costs, and restitution before this “waiting period” begins is a heavy burden on indigent offenders. The Criminal Law Advisory Committee recommended statutory amendments with the goal of allowing the required waiting period to begin even if costs, fees, fines, or restitution are not yet paid in full.

The juvenile adjudication expungement waiting period (0, 1, or 2 years) begins at “final discharge.”⁴ Unlike in adult criminal cases, “final discharge” is an easily identifiable event that occurs within a relatively short timeframe in all juvenile offender cases regardless of whether the juvenile has unpaid costs, fees, fines, or restitution. The Kansas juvenile offender statutes set overall case length limits on juvenile offender cases (12, 15, or 18 months).⁵ Regardless of whether the juvenile has fulfilled all the requirements of his or her program or probation, including payment of costs, fees, fines, and restitution, when the case length limit is reached the court’s jurisdiction ends, the juvenile is discharged, and the waiting period required for expungement begins. The JO/CINC Advisory Committee agreed that the failure to pay costs, fees, fines or restitution does not prevent the expungement waiting period from beginning because

³ K.S.A. 2020 Supp. 12-4516 and 21-6614.

⁴ K.S.A. 2020 Supp. 38-2312(e)(1).

⁵ K.S.A. 2020 Supp. 38-2391(b).

there is a definite point in every juvenile offender case when the juvenile will be discharged regardless of any failure to pay costs, fees, fines, or restitution. Therefore, the Committee does not recommend any statutory amendments regarding the required “waiting period” for juvenile adjudication expungement.

Ruling on Expungement

In its study, the Criminal Law Advisory Committee concluded some courts were denying adult conviction expungement based solely on unpaid costs, fines, fees, or restitution even if the petitioner was unable to pay those outstanding balances. In juvenile offender cases, the JO/CINC Advisory Committee members reported that at the end of the case, some jurisdictions cancel any unpaid costs, fines, fees, or restitution, while in other jurisdictions, outstanding costs, fees, fines, or restitution are sent to collections. Generally, outstanding costs, fines, fees, and restitution are not barriers to juvenile adjudication expungement; however, it could be in some cases. The Committee agreed it is helpful for the juvenile expungement statute to mirror language in the adult expungement statutes. Therefore, the Committee recommends K.S.A. 2020 Supp. 38-2312(e)(2) mirror the language recommended by the Criminal Law Advisory Committee to prohibit the court from denying the petition for expungement due to a juvenile’s inability to pay outstanding costs, fees, fines, or restitution while also allowing the court to consider an unwillingness to pay as a factor in denying the expungement.

The Committee also recommends the subsection include a clear statement that the expungement shall not release the juvenile from the obligation to pay the costs, fines, fees, or restitution unless the court otherwise orders that the juvenile is no longer responsible for the outstanding balance. The Committee recommended K.S.A. 2020 Supp. 38-2312(e)(2) be amended as follows:

~~“(2) The court may require that all court costs, fees and restitution shall be paid. The court shall not deny the petition for expungement due to the juvenile’s inability to pay outstanding costs, fees, fines, or restitution. An unwillingness, rather than inability, to pay such fees and costs can be a factor in denying expungement. Unless the court orders to the contrary, expungement shall not release the juvenile from the obligation to pay outstanding costs, fees, fines, or restitution.~~

Collection of Outstanding Debt

Generally, when a record is expunged, it is sealed and only accessible by a limited number of people in specific circumstances. To facilitate the collection of outstanding debt after an adult conviction expungement, the Criminal Law Advisory Committee recommended K.S.A. 2020 12-4516(i) and 21-6614(i) include a subsection allowing a list of individuals limited access to documents and information regarding the outstanding costs, fees, fines, or restitution. While costs, fees, fines, and restitution are ordered in juvenile offender cases, the amount of the costs, fee, fine, or restitution is often lower than in an adult case, taking into consideration that the payor is a minor without the earning capacity of an adult. The JO/CINC Advisory Committee agreed that post expungement record access for collection purposes is a rare problem; however, while evaluating the request for expungement, if the court is concerned about the ability to collect the debt after the expungement, K.S.A. 2020 Supp. 38-2312(k)(5) already allows the court, in the expungement order, to specifically order that certain people have access to the record.

Adjudication and Conviction History

Though unrelated to the issue of payment of costs, fines, fees, and restitution, the JO/CINC Advisory Committee took up another juvenile expungement issue identified by Kansas Legal Services. K.S.A. 2020 Supp. 38-2312(e)(1)(B) states that the court shall order the expungement if, “since the final discharge of the juvenile, the juvenile has not been convicted of any felony or of a misdemeanor other than a traffic offense or adjudicated as a juvenile offender . . . and no proceedings are pending seeking such a conviction or adjudication[.]” Unlike the adult expungement statutes⁶, the juvenile expungement statute does not limit the review of the petitioner’s criminal history to felonies within the two years preceding the filing of the petition for expungement. Because the juvenile adjudication expungement statutes require a review of the petitioner’s entire criminal history without limiting the review to felonies convictions within a set timeframe, the statute creates a higher barrier to expungement of a juvenile adjudication than an adult conviction.

The JO/CINC Advisory Committee agreed the juvenile adjudication and criminal conviction history requirements for expunging a juvenile adjudication should not be higher than the requirements for expunging an adult conviction. Therefore, the Committee recommends K.S.A. 38-2312(e)(1)(B) be amended as follows:

⁶ See K.S.A. 2020 Supp. 12-4516(h) and 21-6614(h) (the court shall order expungement if the petitioner has not been convicted of a felony in the past two years and no proceeding involving any crime is presently pending or being instituted against the petitioner).

“(B) ~~since the final discharge of the juvenile,~~ in the past two years, the juvenile has not been convicted of a felony ~~or of a misdemeanor other than a traffic offense~~ or adjudicated as a juvenile offender under the revised Kansas juvenile justice code and no proceedings are pending seeking such a conviction or adjudication; . . .”

RECOMMENDATIONS

The Committee recommends K.S.A. 2020 Supp. 38-2312(e) be amended in the following ways:

- (1) to prohibit courts from denying an expungement due to a juvenile’s inability to pay costs, fees, fines, or restitution;
- (2) to require payment of costs, fees, fines, or restitution after expungement unless otherwise ordered by the court;
- (3) to remove consideration of adult criminal misdemeanor convictions from the adult criminal history review; and
- (4) to limit the review of the juvenile’s juvenile adjudication history and adult criminal felony conviction history to the two years preceding the expungement.

The Committee requests the Judicial Council request introduction of the Committee’s recommendations in the next legislative session.

Committee's Statutory Amendment Recommendations

K.S.A. 2020 Supp. 38-2312. Expungement of records; docket fee

(a) Except as provided in subsections (b) and (c), any records or files specified in this code concerning a juvenile may be expunged upon application to a judge of the court of the county in which the records or files are maintained. The application for expungement may be made by the juvenile, if 18 years of age or older or, if the juvenile is less than 18 years of age, by the juvenile's parent or next friend.

(b) There shall be no expungement of records or files concerning acts committed by a juvenile which, if committed by an adult, would constitute a violation of K.S.A. 21-3401, prior to its repeal, or K.S.A. 21-5402, and amendments thereto, murder in the first degree; K.S.A. 21-3402, prior to its repeal, or K.S.A. 21-5403, and amendments thereto, murder in the second degree; K.S.A. 21-3403, prior to its repeal, or K.S.A. 21-5404, and amendments thereto, voluntary manslaughter; K.S.A. 21-3404, prior to its repeal, or K.S.A. 21-5405, and amendments thereto, involuntary manslaughter; K.S.A. 21-3439, prior to its repeal, or K.S.A. 21-5401, and amendments thereto, capital murder; K.S.A. 21-3442, prior to its repeal, or K.S.A. 21-5405(a)(3) or (a)(5), and amendments thereto, involuntary manslaughter while driving under the influence of alcohol or drugs; K.S.A. 21-3502, prior to its repeal, or K.S.A. 21-5503, and amendments thereto, rape; K.S.A. 21-3503, prior to its repeal, or K.S.A. 21-5506(a), and amendments thereto, indecent liberties with a child; K.S.A. 21-3504, prior to its repeal, or K.S.A. 21-5506(b), and amendments thereto, aggravated indecent liberties with a child; K.S.A. 21-3506, prior to its repeal, or K.S.A. 21-5504(b), and amendments thereto, aggravated criminal sodomy; K.S.A. 21-3510, prior to its repeal, or K.S.A. 21-5508(a), and amendments thereto, indecent solicitation of a child; K.S.A. 21-3511, prior to its repeal, or K.S.A. 21-5508(b), and amendments thereto, aggravated indecent solicitation of a child; K.S.A. 21-3516, prior to its repeal, or K.S.A. 21-5510, and amendments thereto, sexual exploitation of a child; K.S.A. 21-5514(a), and amendments thereto, internet trading in child pornography; K.S.A. 21-5514(b), and amendments thereto, aggravated internet trading in child pornography; K.S.A. 21-3603, prior to its repeal, or K.S.A. 21-5604(b), and amendments thereto, aggravated incest; K.S.A. 21-3608, prior to its repeal, or K.S.A. 21-5601(a), and amendments thereto, endangering a child; K.S.A. 21-3609, prior to its repeal, or K.S.A. 21-5602, and amendments thereto, abuse of a child; or which would constitute an attempt to commit a violation of any of the offenses specified in this subsection.

(c) Notwithstanding any other law to the contrary, for any offender who is required to register as provided in the Kansas offender registration act, K.S.A. 22-4901 et seq., and amendments thereto, there shall be no expungement of any conviction or any part of the offender's criminal record while the offender is required to register as provided in the Kansas offender registration act.

(d) When a petition for expungement is filed, the court shall set a date for a hearing on the petition and shall give notice thereof to the county or district attorney. The petition shall state: (1) The juvenile's full name; (2) the full name of the juvenile as reflected in the court record, if different than (1); (3) the juvenile's sex and date of birth; (4) the offense for which the juvenile

was adjudicated; (5) the date of the trial; and (6) the identity of the trial court. Except as otherwise provided by law, a petition for expungement shall be accompanied by a docket fee in the amount of \$176. On and after July 1, 2019, through June 30, 2025, the supreme court may impose a charge, not to exceed \$19 per case, to fund the costs of non-judicial personnel. All petitions for expungement shall be docketed in the original action. Any person who may have relevant information about the petitioner may testify at the hearing. The court may inquire into the background of the petitioner.

(e)(1) After hearing, the court shall order the expungement of the records and files if the court finds that:

(A)(i) The juvenile has reached 23 years of age or that two years have elapsed since the final discharge;

(ii) one year has elapsed since the final discharge for an adjudication concerning acts committed by a juvenile which, if committed by an adult, would constitute a violation of K.S.A. 21-6419, and amendments thereto; or

(iii) the juvenile is a victim of human trafficking, aggravated human trafficking or commercial sexual exploitation of a child, the adjudication concerned acts committed by the juvenile as a result of such victimization, including, but not limited to, acts which, if committed by an adult, would constitute a violation of K.S.A. 21-6203 or 21-6419, and amendments thereto, and the hearing on expungement occurred on or after the date of final discharge. The provisions of this clause shall not allow an expungement of records or files concerning acts described in subsection (b);

(B) ~~since the final discharge of the juvenile, in the past two years,~~ the juvenile has not been convicted of a felony ~~or of a misdemeanor other than a traffic offense~~ or adjudicated as a juvenile offender under the revised Kansas juvenile justice code and no proceedings are pending seeking such a conviction or adjudication; and

(C) the circumstances and behavior of the petitioner warrant expungement.

(2) ~~The court may require that all court costs, fees and restitution shall be paid. The court shall not deny the petition for expungement due to the juvenile's inability to pay outstanding costs, fees, fines, or restitution. An unwillingness, rather than inability, to pay such fees and costs can be a factor in denying expungement. Unless the court orders to the contrary, expungement shall not release the juvenile from the obligation to pay outstanding costs, fees, fines, or restitution.~~

(f) Upon entry of an order expunging records or files, the offense which the records or files concern shall be treated as if it never occurred, except that upon conviction of a crime or adjudication in a subsequent action under this code the offense may be considered in determining the sentence to be imposed. The petitioner, the court and all law enforcement officers and other public offices and agencies shall properly reply on inquiry that no record or

file exists with respect to the juvenile. Inspection of the expunged files or records thereafter may be permitted by order of the court upon petition by the person who is the subject thereof. The inspection shall be limited to inspection by the person who is the subject of the files or records and the person's designees.

(g) A certified copy of any order made pursuant to subsection (a) or (d) shall be sent to the Kansas bureau of investigation, which shall notify every juvenile or criminal justice agency which may possess records or files ordered to be expunged. If the agency fails to comply with the order within a reasonable time after its receipt, such agency may be adjudged in contempt of court and punished accordingly.

(h) The court shall inform any juvenile who has been adjudicated a juvenile offender of the provisions of this section.

(i) Nothing in this section shall be construed to prohibit the maintenance of information relating to an offense after records or files concerning the offense have been expunged if the information is kept in a manner that does not enable identification of the juvenile.

(j) Nothing in this section shall be construed to permit or require expungement of files or records related to a child support order registered pursuant to the revised Kansas juvenile justice code.

(k) Whenever the records or files of any adjudication have been expunged under the provisions of this section, the custodian of the records or files of adjudication relating to that offense shall not disclose the existence of such records or files, except when requested by:

(1) The person whose record was expunged;

(2) a private detective agency or a private patrol operator, and the request is accompanied by a statement that the request is being made in conjunction with an application for employment with such agency or operator by the person whose record has been expunged;

(3) a court, upon a showing of a subsequent conviction of the person whose record has been expunged;

(4) the secretary for aging and disability services, or a designee of the secretary, for the purpose of obtaining information relating to employment in an institution, as defined in K.S.A. 76-12a01, and amendments thereto, of the Kansas department for aging and disability services of any person whose record has been expunged;

(5) a person entitled to such information pursuant to the terms of the expungement order;

(6) the Kansas lottery, and the request is accompanied by a statement that the request is being made to aid in determining qualifications for employment with the Kansas

lottery or for work in sensitive areas within the Kansas lottery as deemed appropriate by the executive director of the Kansas lottery;

(7) the governor or the Kansas racing commission, or a designee of the commission, and the request is accompanied by a statement that the request is being made to aid in determining qualifications for executive director of the commission, for employment with the commission, for work in sensitive areas in parimutuel racing as deemed appropriate by the executive director of the commission or for licensure, renewal of licensure or continued licensure by the commission;

(8) the Kansas sentencing commission; or

(9) the Kansas bureau of investigation, for the purposes of:

(A) Completing a person's criminal history record information within the central repository in accordance with K.S.A. 22-4701 et seq., and amendments thereto;
or

(B) providing information or documentation to the federal bureau of investigation, in connection with the national instant criminal background check system, to determine a person's qualification to possess a firearm.

(l) The provisions of subsection (k)(9) shall apply to all records created prior to, on and after July 1, 2011.